Bannister v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 9 OF 1987
CHAN SEK KEONG J
5 OCTOBER 1989

Criminal Law — Causing hurt — Self-defence — Penal Code (Cap 103, 1970 Ed), s 324

Evidence — Medical opinion — Cause of wound — Nature of instrument used to inflict wound — Medical officer's opinion unclear — Reasonable doubt raised

Criminal Procedure — Trial judge's findings — Appellate court disagreeing with trial judge's finding of facts — Different conclusions on evidence drawn by appellate court

Criminal Procedure — Sentencing — Factors to be considered — Appellate court disagreeing with trial judge's finding of facts — Different conclusions on evidence drawn by appellate court — Appellate court reconsidering factors to be taken into account in sentencing — Sentence manifestly excessive

The appellant was convicted on the charge of voluntarily causing hurt to another under s 324 of the Penal Code (Cap 103, 1970 Ed). During the exchange of blows, a sharp instrument with a cutting edge, or edges, had been used by the accused to inflict one or more of the three stab wounds. Of the three wounds, one was inflicted in the stomach. The appeal before the court turned on the cause of the stomach wound and the exact circumstances in which it was caused. It is the appellant's case that he had stabbed the complainant in the stomach with the jagged edges of a broken bottle in self-defence.

Held, dismissing the appeal against conviction but allowing the appeal against sentence:

(1) The court had made a careful inspection of the tear on the front right side of the shirt and had compared the shape of the tear with the shape of the broken bottle and pieces of glasses. The two shapes fit each other.

(2) The medical officer's evidence on the nature of the weapon that was used raised a reasonable, if not serious, doubt as to the validity of the opinion having regard to the facts. Her evidence on the shape of the wound and its precise cause was at the lowest contradictory and the highest unsure. Further, the fact that no sharp instrument with a cutting edge was recovered from the scene, which was the trial judge's reason for accepting PW2's opinion, did not make it any the more probable that the appellant had used such an instrument. Similarly, not all pieces of glass from the broken bottle had been found at the scene. There was therefore more than a reasonable doubt as to the cause of the wound.

(3) The court agreed that the plea of self-defence must fail on the facts of this case. As PW1 was more or less drunk and was in no position to defend himself against two persons, the use of a broken bottle to stab PW1 must have exceeded whatever right of self-defence the appellant might have had in the circumstances. However, it was not necessary for the trial judge, in rejecting the plea of self-defence, to find that 'weapons with cutting edges' were used.

(4) Having found that the other two injuries on PW1's back were not caused by the appellant but by another person who joined in the fray, the trial judge should not have taken these two injuries into account for the purpose of punishing the appellant. The appellant did not cause these injuries and he was not charged on the basis that he had a common intention with the other person to voluntarily cause hurt to PW1.

(5) The court was of the view that the sentence of six months' imprisonment and three strokes of the cane was manifestly excessive. There was reasonable doubt as to the degree of premeditation that the appellant had when he inflicted the wound. The appellant had no criminal record. He surrendered himself to the police and admitted to stabbing PW1 with a broken bottle, albeit by way of self-defence. He was genuinely remorseful. The appellant was, apart from this incident, a useful citizen.

(6) The court did not see the need to send him to prison for an offence committed in circumstances which did not necessarily prove that he had a propensity to acts of violence. In the court's view, he should be given another chance. Accordingly, the court set aside the sentence of imprisonment and caning and substituted therefor a fine of $5,000 and in default two months' imprisonment.

M Amaladass for the appellant.
Yang Ing Loong for the Public Prosecutor.

Cur Adv Vult

Chan Sek Keong J: The appellant was convicted on the following charge:

> You ... are charged that you, on or about 13 August 1983, at about 12.30am, near the entrance of Golden House Mid-Night Music Lounge, 306 Geylang Road, Singapore, did voluntarily cause hurt to one Yeo Cheow Fatt, by means of a cutting instrument, which when used as a weapon of offence, is likely to cause death, and you have thereby committed an offence punishable under Section 324 of the Penal Code, Chapter 103.

He was sentenced to six months' imprisonment and three strokes of the cane. He has appealed against conviction and sentence.

The facts as found by the trial judge were as follows:

(a) that on 13 August 1983 at about 12.30am at the entrance of the Golden House Mid-Night Lounge, PW1 had had an argument with the accused and another male person in respect of a waitress who worked in the said lounge;

(b) that on the same date and around the same time the argument between PW1 and the other two persons had progressed to an exchange of blows between them;

(c) that during the exchange of blows, PW1 had been dealt with blows, with fists, to his face and body and had also been inflicted with three stab wounds to his stomach and back;

(d) that during the exchange of blows, referred to in paras (b) and (c) above, a sharp instrument with a cutting edge, or edges, had been used by the accused to inflict one or more of the three stab wounds sustained by PW1; and

(e) that during the exchange of blows, referred to in paras (b) and (c) above, PW1 had not used any implement

to attack the accused and the other male person who had both confronted him.

Of the three wounds, one was inflicted in the stomach frontally and the other wounds were inflicted in the back of the body. The two back wounds were tri-radiate in shape and were very deep, they having reached the bone. They were too deep to have been caused by the jagged edges of a broken bottle, as alleged by the appellant. The trial judge found that the two wounds were more like stab wounds caused by a bearing scraper. He also found, on the evidence, that the said wounds were probably caused by the other male person and not the appellant. However, he found that the stomach wound was caused by the appellant and that it was caused by a cutting instrument such as a knife and not the broken points of a broken bottle.

The appeal before me turns on the cause of the stomach wound and the exact circumstances in which it was caused. It is the appellant's case that he had stabbed the complainant in the stomach with the jagged edges of a broken bottle in self-defence. In a s 122(6) CPC statement to the police, the appellant had admitted to this 'fact'. In his testimony at the trial, he reiterated this 'fact'.

In his grounds of decision, the trial judge gave the following reasonings for his finding that the stomach wound was not caused by the broken bottle:

> From the evidence of Dr Hweena Ng (PW2), it can be seen that the possibility for the three stab wounds to have been caused by the jagged points of a broken bottle or broken glass, as suggested in the defence, was unlikely while the fact that they were caused by something other than such objects (ie a broken bottle or broken glass) was almost a certainty. In that respect Dr Ng (PW2) had opined that in respect of the frontal stomach stab wound its shape was 'fairly straight' and 'not identical in shape to the tear in the shirt' of PW1, which was 'a jagged tear, like an L-shaped but not entirely so and also like a T' (vide: p 32, notes of evidence). It was also due to a sharp object (vide: p 11, notes of evidence) and it was 'more likely that a knife could have caused this injury' (vide: p 12, notes of evidence). For these reasons given by Dr Ng (PW2), which I accepted, I was accordingly satisfied and found as a fact that this (frontal) stab wound in PW1's stomach was caused by a cutting instrument, such as a knife, and not by the jagged points of a broken bottle as claimed by the accused.
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> In discounting a broken bottle as being the cause for this stab wound, Dr Ng (PW2) had given cogent and convincing reasons which were, additionally, not disturbed in cross-examination. I was aware that no knife, or cutting instrument, for that matter, had been recovered from the scene by the police.

The evidence in chief of PW2 in relation to the stomach wound was as follows:

> The wound in the front was three cm long and very deep.
>
> Underlying muscles were cut with a lot of bleeding. There was a superficial laceration on the front of surface of the left lobe of the liver. This laceration was about 1.5 cm long. It was not bleeding actively. ...
>
> The stab wound in front could be due to the broken edges of a broken bottle.

In cross-examination, PW2 said:

> A: The depth of this wound is against the suggestion that it could be caused by a broken bottle because it was very deep and had cut through all the layers of the muscles and lacerated the liver. Only if it was a long sliver of glass could a broken bottle be responsible for this. There were no other accompanying cuts and scratches at the entrance of this wound to support the suggestion that a bottle was used to cause it. In my opinion it was more likely that a knife could have caused this injury.
> Q: The opening of the wound — was it straight or curved?
> A: I have recorded in my notes that it looks fairly straight.

It would appear that up to this stage, PW2's evidence was not sufficiently clear as PW2 was recalled later. Her testimony, in question and answer form, was as follows:

> Q: Please look at exh P12 — could any of these pieces have been responsible for any of the stab wounds?
> A: There is a piece measuring about 3.5 inches in length and with a point. It may or may not be responsible for the stomach wound. I should say I am not an authority on injuries caused by glass.
> Q: Regarding the stomach wound you stated there were no other injuries accompanying the entrance of the wound in question — if the patient was wearing clothing over that part would this not have prevented the other expected cuts from being caused?
> A: It is not likely. If glass can cut through one part the other parts would be cut through, particularly if the same force was exerted at that area.
> (Exhibit P14 is shown to the witness. She is shown the exhibit marked LKL/A/83.)
> Q: Any other tears around this entry tear on the shirt?
> A: There is only a single jagged tear on the front right side of the shirt, with no accompanying cuts or tears.
> Q: Is it a straight tear or is it curved?
> A: It is a jagged tear, like an L-shaped but not entirely so and also like a T. It has three corners. It looks tri-radiate also.
> Q: Is it possible that the piece of glass you referred to earlier could have caused such a tear too?
> A: It is possible. I really cannot tell.
> Q: Was the stomach injury on PW1 in that shape as shown by the tear on the shirt?
> A: I can't remember but as recorded and drawn in my notes it is fairly straight. It is not identical in shape to the tear in the shirt.

I have made a careful inspection of the tear on the front right side of the shirt and have compared the shape of the tear with the shape of the broken bottle and pieces of glasses. The two shapes fit each other. The shape of the tear in the shirt is more curved than tri-radiate and it certainly does not look like a T. It also does not look like an L. However, PW2's evidence was that the tear looked like an L and also a T and also tri-radiate and that it did not correspond to the shape of the wound 'as recorded and drawn in my notes it is fairly straight'.

Although PW2 opined that it was more likely that a knife could have caused the stomach injury, she had also

said three times that the wound could have been caused by glass from a broken bottle and that she was not an expert on injuries caused by glass. Her opinion that a knife had caused the wound was, in my view, probably influenced by her having recorded the wound as 'fairly straight'. Could she have been wrong in her recording? In this regard, it has to be pointed out that at the end of her evidence in chief (at p 12) she corrected her report (P 9) to say that the front wound was not tri-radiate and when she was later recalled to clarify her evidence, she then said that 'it looks tri-radiate also'.

I am of the view that her evidence on the nature of the weapon that was used raised a reasonable, if not serious, doubt as to the validity of the opinion having regard to the following facts: (1) the complainant was wearing the shirt during the fight; (2) the tear in the shirt was indisputably caused by a stab by a sharp instrument; (3) the instrument which cut into the shirt in that way must have also cut into that part of PW1's body; (4) the shape of the tear corresponded more with the shape of a piece of glass from a broken bottle; (5) the location of the tear on the shirt corresponded to the location of the only serious wound in the stomach. As there was no other wound in the stomach, I must conclude that there was high probability that the wound was caused by the same instrument that made the tear in the shirt. This conclusion however does not accord with the shape of the stomach wound as recorded by PW2. If then the tear has a curved shape, how could the wound have a 'fairly straight' shape unless PW2 was not being precise in her language? That, in my view, was entirely probable when she made her notes as she could not have known, at 2am that night, that the precise cause of the wound would assume significance at the trial. In my view, the evidence on this point on the shape of the tear was at the lowest contradictory and at the highest unsure.

The trial judge gave as an additional reason for accepting the opinion of PW2 on the probable cause of the stomach wound that no sharp instrument with a cutting edge was recovered from the scene. I do not think that this fact made it any the more probable that the appellant had used such an instrument. The same reasoning was applicable to the broken bottle as there was no evidence that all the pieces of glass from it were recovered from the scene. What I am suggesting here is that there is more than a reasonable doubt as to the cause of the stomach wound and that the appellant ought to have been given the benefit of that doubt. Accordingly, I differ from the trial judge on this finding of fact.

I find it necessary to embark on a careful examination of the probable cause of the stomach injury as it is related to the appellant's defence, which was that he had stabbed PW1 in the stomach with a broken bottle during the scuffle in self-defence as PW1 was bigger than he was. In his s 122(6) CPC statement, the appellant had admitted to stabbing PW1 in the stomach by that means. The appellant's evidence was that it was PW1 who attacked him with a bottle, that PW1 dropped the bottle and the appellant then picked it up and hit PW1 on the head, that the bottle broke and then in the scuffle PW1 was stabbed with the broken bottle. The trial judge rejected this evidence and with it the plea of self-defence as he believed that PW1 had been stabbed in the stomach with a sharp instrument like a knife and that the appellant had lied about how the two wounds on the back had been caused to mask the fact that another person had wielded a weapon. In short, the trial judge found that PW1 was attacked by the appellant and one other person with fists and weapons when PW1, who was more or less drunk, was not in a position to defend himself.

I agree that the plea of self-defence must fail on the facts of this case. But, it seems to me that it was not necessary for the trial judge, in order to reject the plea of self-defence, to find that 'weapons with cutting edges' were used. As PW1 was more or less drunk and was in no position to defend himself against two persons, the use of a broken bottle to stab PW1 must have exceeded whatever right of self-defence that the appellant might have had in the circumstances.

I come now to the sentence. This was how the trial judge dealt with it:

> Before sentence was passed it was submitted, in mitigation, that in complying with his superior's instuctions to investigate into the quarrel between PW1 and the waitress the accused had become embroiled in the fight with PW1, which had erupted spontaneously. He had also voluntarily surrendered himself to the police and had, in admitting to the infliction of the stomach wound on PW1, co-operated with the police. He was also extremely sorry for what had occurred and pleaded for leniency.
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> I accepted the fact that the fight had erupted spontaneously but could not ignore the fact that weapons had been used by the accused and another in inflicting such dangerous and terrible injuries on PW1 who was, relatively, in a disadvantageous position against his opponents. Although his voluntary surrender to the police did mitigate his actions on the night in question, for which he was probably genuinely remorseful, I could not ignore the fact that the offence for which he was charged was a grave one indeed which called for stern punishment. Accordingly, in the circumstances, I sentenced him to serve a term of six months' imprisonment and also ordered that he receive three strokes of caning.

It is clear from the above passages that the trial judge in passing sentence, was unduly influenced by the 'dangerous and terrible' injuries suffered by PW1 and the manner by which they were caused. I have found that the stomach wound was probably caused by the broken bottle and less likely by a knife. This finding has a bearing on another finding of the trial judge as to the cause of the fight. The trial judge appeared to have found, although this is not clear from the grounds of decision, that it was the appellant and another person who set upon PW1 with weapons.

In my view, the trial judge did not give sufficient consideration to the fact that the fight occurred in a bar in the early hours of the morning involving a customer, PW1, who was more or less drunk and who was trying to take a waitress home. PW1's version was that the waitress was willing to go home with him but he was stopped by two persons who assaulted him. Why the appellant and one other person had decided to assault PW1 in that circumstance was never explained. The appellant's version was that the waitress was not willing to go home with PW1 who began to pester her, and that when the appellant told him to leave the premises, that was when PW1 became aggressive and the fight started. In these circumstances, given a drunken and 'obstreperous' customer trying to take a waitress home, I would have thought it more likely that the waitress had not agreed to go home with him. If the waitress had decided to leave with PW1, there was no conceivable reason for the appellant to have assaulted PW1. The appellant was then working as a cashier and not as a bouncer; the bar had two bouncers. In my view, this must raise a reasonable doubt as to who started the fight.

There is another factor which the trial judge appears to have taken into account in sentencing which he should not have done. Having found that the other two injuries on PW1's back were not caused by the appellant but by another person who joined in the fray, the trial judge should not have taken these two injuries into account for the purpose of punishing the appellant. He did not cause these injuries and the appellant was not charged on the basis that he had a common intention with the other person to voluntarily cause hurt to PW1.

For the above reasons, I am of the view that the sentence of six months' imprisonment and three strokes of the cane was manifestly excessive. I bear in mind that the stomach injury sustained by PW1 was admittedly serious but as against that, there is a reasonable doubt as to the degree of premeditation that the appellant had when he inflicted the wound. There was a reasonable doubt as to how the stomach injury was caused. It could have been by the sharp edge of a broken bottle during the fight which was also probably caused and started by PW1. The appellant was 29 years old and supporting a wife and a child of 11 months and an ageing mother; his wife was expecting another at the time of the trial. He had no criminal record. He surrendered himself to the police and admitted to stabbing PW1 with a broken bottle, albeit by way of self-defence. He was genuinely remorseful. He was working as a fitter earning $800 per month at the time of his conviction. The appellant was, apart from this incident, a useful citizen. I do not see the need to send him to prison (and much less to impose caning on him) for an offence committed in circumstances which did not necessarily prove that he had propensity to acts of violence. He no longer works in a bar. In my view, he should be given another chance. Accordingly, I shall set aside the sentence of imprisonment and caning and substitute therefor a fine of $5,000 and in default two months' imprisonment. The appeal against conviction is dismissed and the appeal against sentence is allowed to the extent aforesaid.

Order accordingly.

Solicitors: *M Dass & Co.*

Reported by *Terence Tan Bian Chye*

Excelsior Hotel Pte Ltd v Hiap Bee (Singapore) Pte Ltd (OCBC Finance (Singapore) Ltd, Interveners)

HIGH COURT (SINGAPORE) — SUIT NO 1868 OF 1987
CHAO HICK TIN JC
4 OCTOBER 1989

Land Law — Specific performance — Agreement for sale and purchase of property — Purchaser defaulting on instalment payments — Whether common law remedy restricted by legislation or sale agreements — Sale of Commercial Properties Act (Cap 281, 1985 Ed), s 5 — Sale of Commercial Properties Rules 1979, cl 6(3)

The plaintiffs were the vendors and the defendants were the purchasers of two units of shopping premises. The sales were governed by the Sale of Commercial Properties Rules 1979 and two agreements of sale and purchase (the 'sale agreements') were executed by the parties. The interveners were the chargees of the said units under two separate deeds of assignment and mortgages in escrow. Under the sale agreements, the price for the said units was to be paid in instalments in accordance with the progress of the construction of the project. There were defaults on the defendants' part in paying up the instalments due. By this action, the plaintiffs claimed specific performance of the two sale agreements and a declaration that the plaintiffs were entitled to a lien on the said units in respect of the sums due and owing by the defendants and an order that in default thereof the plaintiffs be at liberty to apply to enforce the lien. By way of a summons-in-chambers, the plaintiffs sought summary judgment in terms as aforesaid in respect of only one of the two units (unit no B1-10). The senior assistant registrar refused to grant specific performance and instead ordered that the plaintiffs should proceed under cl 6(3) of the sale agreement. The plaintiffs appealed. The defendants and the interveners submitted that the remedy provided in cl 6(3) superseded all other remedies which might be available to a vendor under general law.

Held, allowing the plaintiffs' appeal:

(1) Where the contract is of such a kind that the purchaser can sue for specific performance, the vendor can also sue for specific performance, although the claim is merely to recover a sum of money. The real question is therefore whether there is anything in the sale agreement, and in particular cl 6(3) thereof, or in the Act or the Rules made thereunder, which takes away or restricts the common law right of the plaintiffs to ask for the remedy of specific performance.